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Attorneys for Petitioner
THE BOEING COMPANY



**BEFORE THE STATE WATER RESOURCES CONTROL BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Requirement to Submit)	PETITION FOR REVIEW AND
Work Plan for Groundwater Assessment,)	REQUEST FOR HEARING
Former Douglas Aircraft Site – Site ID No.)	Cal. Water Code § 13320
2043H00 - Los Angeles Regional Water)	23 C.C.R. § 2050 et seq.
Quality Control Board 13267 Order)	

INTRODUCTION

The Boeing Company (“Boeing” or “Petitioner”) hereby petitions for review of the final action of the California Regional Water Quality Control Board, Los Angeles Region (“Regional Water Board”) in issuing an order pursuant to California Water Code section 13267, requiring Boeing to submit a work plan to assess the lateral and vertical distribution of volatile organic compounds (“VOCs”) on and adjacent to the former Douglas Aircraft Company (“Douglas”) site located in Santa Monica, CA (the “Site”). The Order is attached hereto as **Exhibit A**.

This Petition is brought pursuant to the provisions of California Water Code section 13320(a) and Title 23 of the California Code of Regulations (“C.C.R.”), section 2050.

Boeing is submitting this Petition as a protective filing. Boeing and the Regional Water Board are currently engaged in negotiations to correct the Regional Water Board’s error in issuing the Order, but Boeing must file this Petition to timely preserve its rights to seek relief from this Order, if necessary. Because this is a protective filing, Boeing reserves its rights to

revise, amend and/or supplement this Petition in the event it becomes necessary to proceed before this Board.

Petitioner requests the State Board to hold this petition in abeyance pursuant to Water Code § 13320 and 23 C.C.R. §§ 2050 *et seq.* Petitioner reserves its rights to seek a stay of the Order by the State Board.

PETITION FOR REVIEW AND REQUEST FOR HEARING

I. NAME AND ADDRESS OF PETITIONER

Boeing's corporate offices are located at:

The Boeing Company
100 North Riverside
Chicago, IL 60606-1596

The Facility is located at:

Former Douglas Aircraft Site
2902 Exposition Blvd.
Santa Monica, CA 91601

Petitioner may be contacted through its counsel record, Peter H. Weiner, whose contact information is provided above.

II. SPECIFIC ACTION OF THE REGIONAL WATER BOARD

On February 4, 2009, the Regional Water Board issued California Water Code Section 13267 Order – Requirements to Submit Ground Water Assessment – Former Douglas Aircraft Site – Site ID No. 2043H00 (“Order”), requiring Boeing to submit a work plan to assess the lateral and vertical distribution of contamination in groundwater underlying and adjacent to the Site. The Order (1) describes the Site history; (2) alleges that the TCE contamination underlying and adjacent to the Site is attributable to or was caused by Douglas's activities; and (3) requires Boeing to submit a “work plan (technical report) to fully assess the lateral and vertical distribution of VOCs on and adjacent to” the Site.

Boeing disputes the Regional Water Board's allegation in the Order that the trichloroethene (“TCE”) contamination in groundwater underlying and adjacent to the Site is

attributable to or was caused by Douglas's activities. Boeing does not believe the evidence supports any such allegation. In addition, Boeing believes that the Regional Water Board's February 4, 2009 Order contains additional allegations that are inaccurate and without factual basis, *see infra*, which if left unchallenged, may subject Boeing to future liability.

III. DATE OF THE REGIONAL WATER BOARD ACTION

The Regional Water Board's Order was issued February 4, 2009.

IV. STATEMENT OF WHY THE REGIONAL WATER BOARD ACTION WAS INAPPROPRIATE AND IMPROPER

Among other things, section 13267 of the California Water Code permits the Regional Water Board to require "technical or monitoring program reports" from any person who "has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region." In requiring such a report, the Regional Water Board must "provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

As discussed above, the Regional Water Board's Order alleges that the TCE contamination underlying and adjacent to the Site is attributable to or was caused by Douglas's activities, and requires Boeing to submit a work plan to "fully assess the lateral and vertical distribution of VOCs on and adjacent to" the Site. Boeing disputes the Regional Water Board's allegation in the Order that the trichloroethene ("TCE") contamination in groundwater underlying and adjacent to the Site is attributable to or was caused by Douglas's activities. Boeing does not believe that the evidence supports any such allegation. On the contrary, the evidence refutes the allegation. As a result, the Order does not provide the "written explanation" or identify "evidence" that "supports requiring [Boeing] to provide" the requested work plan, as section 13267 mandates, because it provides inaccurate allegations.

In particular, the Regional Water Board's February 4, 2009 Order contains allegations or statements that are inaccurate and without factual basis, including but not limited to the statements that: "the Regional Board believes that former Douglas activities are the source of the TCE in groundwater;" and "Regional Board staff believe that the plume of TCE in groundwater that is documented on [Boeing's] former property and the Metropolitan Transit Authority property to the north resulted from releases of TCE that occurred at the former

Douglas site and which are associated with the documented historical degreasing and painting activities.” Also unsupported, inaccurate, and without factual basis are the reasons the Regional Water Board provides for the currently observed configuration of the TCE plume. Previous investigations have indicated a contrary conclusion, and the work that Boeing is now being asked and is willing to do will provide further data on which to base a factual conclusion.

V. THE MANNER IN WHICH BOEING IS AGGRIEVED

Boeing does not object to complying with the Order’s requirement to prepare a work plan to assess the lateral and vertical distribution of VOCs on or originating on the Site.

However, the inaccurate, unsupported, and misleading statements that attribute the TCE contamination in groundwater underlying and adjacent to the Site to Douglas potentially expose Boeing to unwarranted administrative and civil liability. The Regional Water Board and/or other agencies could rely on the Regional Water Board’s Order as a basis for imposing further requirements and/or liability on Boeing. Other potentially responsible parties or persons allegedly aggrieved by the contamination similarly could use the Regional Water Board’s Order to try to secure injunctive, declaratory, or monetary relief from Boeing. Such requirements and liability could be significant.

VI. SPECIFIC ACTION REQUESTED BY BOEING

Boeing requests that this Board direct the Regional Water Board to rescind the Order and issue a new order requiring Boeing to submit a work plan for further Site assessment without any statements that attribute the TCE contamination underlying and adjacent to the Site to Douglas and without a requirement to assess more than contamination underlying or originating from the Douglas site.

VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR STAY AND PETITION

As discussed above, the Order does not provide the “written explanation” or “evidence” that “supports requiring [Boeing] to provide” the requested work plan, as California Water Code section 13267 requires.

The Regional Water Board has an affirmative duty to “bridge the analytical gap between the raw evidence and the ultimate decision or order.” *Topanga Ass’n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 515 (1974). This process serves to “conduce the

administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions.” *Id.* at 516. The Board did not meet this standard when it issued the Order.

For these reasons, the Order is unreasonable, arbitrary and not supported by the evidence.

VIII. LIST OF INTERESTED PERSONS

A list of “interested persons” is attached hereto as **Exhibit B**.

IX. STATEMENT THAT COPIES OF THIS PETITION HAVE BEEN SENT TO THE REGIONAL WATER BOARD

Copies of this Petition have been served on the Executive Officer of the Los Angeles Regional Water Quality Control Board. See attached certificate of service.

X. STATEMENT AS TO WHETHER ISSUES RAISED IN THIS PETITION WERE PRESENTED TO THE REGIONAL WATER BOARD PRIOR TO REGIONAL BOARD ACTION

Boeing was not contacted by the Board regarding this Order prior to the Regional Water Board action. Boeing has had previous contact with the Board in which the Board concluded that TCE from the site was *not* impacting groundwater. Boeing was therefore surprised to receive the Order at issue in this Petition. However, prior to filing this Petition, Boeing has asked the Regional Water Board to rescind the Order and to re-issue it without the contested language.

XI. REQUEST FOR HEARING

Boeing is not requesting an immediate hearing, but reserves the right to do so if the ongoing negotiations with the Regional Water Board are not successful. In addition, by copy of this petition to the Executive Officer of the Regional Board, Boeing also reserves its right to request preparation of the administrative record herein should a hearing be requested.

XII. STATEMENT OF ADDITIONAL EVIDENCE

Boeing reserves the right to present additional evidence at any hearing on this Petition in accordance with 23 C.C.R. § 5050.6(b). Such evidence will include, but will not be limited to, factual and expert evidence to support the contentions asserted herein.

Dated: March 5, 2009

Respectfully Submitted,

Peter H. Weiner / by MJS

Peter H. Weiner

Paul, Hastings, Janofsky & Walker LLP

Attorney for Petitioner The Boeing Company

LEGAL_US_W# 61219224.1

EXHIBIT A

SECTION 13267 ORDER
REQUIREMENT TO SUBMIT
WORKPLAN FOR GROUND
WATER ASSESSMENT

FORMER DOUGLAS AIRCRAFT SITE
SITE ID NO.2043H00



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Cal/EPA Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

February 4, 2009

Mr. Robert Scott
Boeing Realty Corporation
4501 Conant Street
Long Beach, California, 90808

**CALIFORNIA WATER CODE SECTION 13267 ORDER: REQUIREMENT TO SUBMIT
WORK PLAN FOR GROUNDWATER ASSESSMENT - FORMER DOUGLAS AIRCRAFT
SITE, 2902 EXPOSITION BLVD., SANTA MONICA, CALIFORNIA 91601 (SITE ID NO.
2043H00)**

Dear Mr. Scott:

Los Angeles Regional Water Quality Control Board (Regional Board) staff have reviewed documents illustrating the current and former distribution of volatile organic compounds at the site referenced above. We have also reviewed the history of assessment and remediation at the site, the history of the current owner (Verizon) using groundwater pump and treat technology for their motor fuel release, the well construction and history of pumping from the City of Santa Monica domestic water supply wells (SM-3 and SM-4) immediately north of the site, and your recently submitted response to the Regional Board's November 13 California Water Code Section 13267 letter requirement for you to complete a Chemical Storage and Use Questionnaire (CSUQ) for the site.

Your response to the CSUQ indicates that the Douglas Aircraft Company (Douglas) operated at the facility from 1942 until 1972, prior to the Boeing Company (Boeing) purchasing Douglas. Activities at the site included degreasing, metal painting, protective-film dipping, maintenance shop operations, fiberglass manufacturing, wing-tip assembly, heat treating, phenolic cutting, grinding, plastics laboratory activities, metal working, and chemical and fuel storage. Chemicals used included paint, trichloroethene (TCE), and fuel oil. The fuel oil was stored in an underground tank. Equipment at the site included chemical storage tanks, a metal paint spray booth, degreasers, waste drums, and waste holding tanks including a clarifier. Sources of industrial waste included the degreaser, paint spray booth, and clarifier.

Regional Board staff believe that the plume of TCE in groundwater that is documented on your former property and the Metropolitan Transit Authority property to the north resulted from releases of TCE that occurred at the former Douglas site and which are associated with the documented historical degreasing and painting activities.

The current dissolved TCE plume increases in concentration upgradient, away from the former Douglas site. This characteristic would normally be interpreted as representing a dissolved plume originating from an offsite source. However, in this instance the Regional Board believes that former Douglas activities are the source of the TCE in groundwater, and the currently observed configuration of the TCE plume is a result of:

1. The TCE and related volatile organic compounds (VOCs) were released during painting, degreasing, and other activities related to historic aircraft manufacturing or other activities at the site; in an area that now has a very low groundwater gradient. The low groundwater gradient is documented by the difference in groundwater elevations at the former Douglas site and at the

California Environmental Protection Agency



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Westside Medical Park (WMP) approximately 2,000 feet northeast ("upgradient") of the Douglas site. During the multi-site groundwater gauging event conducted by the Gillette Company on August 17, 2008, the groundwater elevation in WMP well MW-5 was 122.07 feet and the groundwater elevation in Douglas well MW-44 was 120.81. The difference was 1.26 feet.

2. Santa Monica water supply wells SM-3 and SM-4 were installed north of the TCE release area at the site and began pumping. They are in the median of Olympic Blvd. Well SM-3 began pumping in the late 1960s, and SM-4 began pumping in the early 1980s. The gravel pack in SM-3 extends to within 50 feet of the surface, and the gravel pack in SM-4 extends to within 200 feet of the surface. Well SM-3 is approximately midway between the Westside Medical Park and the Douglas site. Well SM-4 is approximately 950 feet southwest of SM-3 and 450 feet northwest of the Douglas site well MW-44.
3. The pumping from water supply wells SM-3 and SM-4 have influenced the groundwater gradient sufficiently to draw TCE toward the water supply wells and onto and beyond the MTA right of way.
4. The Verizon motor fuel release occurred, was discovered and assessed. The pump and treat groundwater system to address the motor fuel release was installed in 1985, and operated until 1996.
5. The pump and treat system reduced the concentration of fuel hydrocarbons and TCE in the vicinity of the fuel tanks and the former degreasing and painting areas. In addition, the naturally occurring biodegradation of the motor fuel resulted in the biodegradation of the TCE. The addition of motor fuel components has been shown to accelerate the biodegradation of TCE in groundwater at numerous sites.
6. The current TCE plume configuration, with increasing concentrations apparently upgradient and offsite, is a result of the plume being drawn toward the city wells when the supply wells are being pumped. As stated before, we believe that the source area of the TCE release has been preferentially attenuated as a result of pump and treat system operation and biodegradation associated with motor fuel biodegradation.

Pursuant to section 13267 of the California Water Code, you are required to submit a work plan (technical report) to fully assess the lateral and vertical distribution of VOCs on and adjacent to the Douglas site. The work plan must be received by the Regional Board no later than **May 1, 2009**.

Pursuant to section 13268 of the California Water Code, failure to submit the required technical report by the specified due date may result in civil liability penalties administratively imposed by the Regional Board in an amount up to one thousand dollars (\$1,000) for each day the technical report is not received.

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

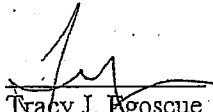
Mr. Robert Scott
Boeing Realty Corporation

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February 4, 2009

Please telephone Mr. Peter Raftery at (213) 576-6724 or email him at praftery@waterboards.ca.gov if you have any questions regarding this request.

Sincerely,



Tracy J. Egoscue
Executive Officer

cc: John D. Ambrosio, Red Bull North America, Inc.

Eddie Arslanian, P.E. (for Hines)

Lisette Bauersachs, City of Santa Monica

Nancy Beresky, PG, CEM (for Red Bull North America, Inc.)

Wayne S. Blank, Shoshana Wayne Gallery

Jim G. Derouin (for Gillette)

David G. Dundas, Esq. (for the Higgins Trusts)

James Farrow, Komex

Zachary Feingold, Verizon

Octavio Fernandez, MTV

Martin Hamann (for 1655 Property LLC)

Stephen Johnson, LECG

Rita Kamat, DTSC

Hillel Kellerman, 1655 Property LLC

Joseph Lawrence, City of Santa Monica

Franklyn Legall (Gillette)

Alva Libuser, New Roads School

Marc L. Luzzatto, The Luzzatto Company

Douglas H. Metzler (for Hines)

Jeff Ogata, Office of Chief Counsel, SWQCB

Monica Roll (Gillette)

Darlene Ruiz (for Gillette)

Pat Sheehan, GZA GeoEnvironmental, Inc.

Bruce Smiley, Esq. (for 1655 Property LLC)

Craig Stewart, Geomatrix Consultants, Inc.

Christopher Wenk, Covington & Burling LLP

California Environmental Protection Agency



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Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

EXHIBIT B

LIST OF INTERESTED PERSONS

List of Interested Persons

Zachary Feingold
Verizon
1849 Ficus Street
Pomona, CA 91766

PROOF OF SERVICE

STATE OF CALIFORNIA
CITY OF SAN FRANCISCO AND COUNTY
OF SAN FRANCISCO

} ss:
}

I am employed in the City of San Francisco and County of San Francisco, State of California. I am over the age of 18, and not a party to the within action. My business address is 55 Second Street, Twenty-Fourth Floor, San Francisco, California 94105-3441.

On March 4, 2009, I served the foregoing document(s) described as:

PETITION FOR REVIEW AND REQUEST FOR HEARING

on the interested parties by placing a true and correct copy thereof in a sealed envelope(s) addressed as follows:

Jeannette L. Bashaw
State Water Resources Control Board
Office of Chief Counsel
1001 I Street, 22nd Floor
Sacramento, CA 95814

Tracy Egoscue
LA Regional Water Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Zachary Feingold
Verizon
1849 Ficus Street
Pomona, CA 91766



VIA OVERNIGHT MAIL:

VIA UPS: By delivering such document(s) to an overnight mail service or an authorized courier in a sealed envelope or package designated by the express service courier addressed to the person(s) on whom it is to be served.



VIA U.S. MAIL:

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice such sealed envelope(s) would be deposited with the U.S. postal service on March 5, 2009 with postage thereon fully prepaid, at San Francisco, California.

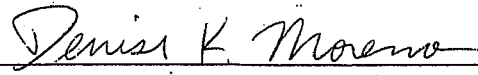


VIA PERSONAL DELIVERY:

I personally delivered such sealed envelope(s) by hand to the offices of the addressee(s) pursuant to CCP § 1011.

1 I declare under penalty of perjury under the laws of the State of California
2 that the above is true and correct.

3 Executed on March 4, 2009, at San Francisco, California.

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6 Denise K. Moreno

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